

**IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

TRI STATE ADVANCED SURGERY
CENTER, LLC, GLENN A. CROSBY II, M.D.,
F.A.C.S., and MICHAEL HOOD, M.D.,

Plaintiffs

v.

HEALTH CHOICE, LLC, and
CIGNA HEALTHCARE OF TENNESSEE, INC.,

Defendants

CONNECTICUT GENERAL LIFE INSURANCE
COMPANY, CIGNA HEALTH AND LIFE
INSURANCE COMPANY, CIGNA HEALTH AND
LIFE INSURANCE COMPANY, and CIGNA
HEALTHCARE OF TENNESSEE, INC.,

Counterclaim Plaintiffs

v.

SURGICAL CENTER DEVELOPMENT, INC.
D/B/A SURGCENTER DEVELOPMENT, and
TRI STATE ADVANCED SURGERY CENTER, LLC,

Counterclaim Defendants

**COUNTERCLAIM DEFENDANTS' CONSENT
MOTION TO EXTEND DISCOVERY DEADLINE**

Counterclaim Defendants Tri State Advanced Surgery Center, LLC (“Tri State”) and Surgical Center Development, Inc. d/b/a SurgCenter Development (collectively, “Counterclaim Defendants”) respectfully request a 90 day extension of the deadline to complete all discovery in the Court’s Amended Final Scheduling Order (ECF 59) (the “Discovery Order”), and to extend other subsequent deadlines accordingly as set forth below. On July 10, 2015, Counterclaim

Defendants' counsel emailed Counterclaim Plaintiffs' ("Cigna") counsel asking for their consent to seek an extension of the discovery deadline in the Discovery Order. On July 14, 2015, Cigna's counsel consented to this request via email. Counterclaim Defendants do not believe that this request for an extension moots their Motion to Stay Discovery, and still believe that the relief sought in that motion is warranted. Cigna continues to oppose Counterclaim Defendants' Motion to Stay Discovery as well as Plaintiffs' Motion for Leave to File an Amended Complaint. No party has previously asked the Court to extend any deadlines in the Discovery Order.

In support of this Motion, Counterclaim Defendants state the following:

1. This case was originally brought by Tri State and two physicians alleging antitrust and state law claims against Cigna and former Defendant Health Choice, LLC. Cigna subsequently brought ERISA and state law counterclaims. By Order dated April 16, 2015, the Court dismissed the original complaint (ECF 78). Counterclaim Defendants' Motion to Dismiss Counterclaims (ECF 61) and Plaintiffs' Motion for Leave to File an Amended Complaint (ECF 80) remain pending.

2. The Court entered the Discovery Order on September 17, 2014 with a deadline for the completion of all discovery by December 4, 2015. When the Court entered the Discovery Order, Defendants' Motion to Dismiss was pending, and the parties had not yet briefed the Motion to Dismiss Cigna's Counterclaims.

3. Given the schedule, the parties have worked diligently to reach agreement on the scope of the discovery and the parameters for producing significant amounts of electronic documents and data. The parties have met and conferred numerous times via telephone and e-mail regarding various discovery issues, including electronic discovery protocols, the scope of the discovery requests, the production of organizational charts, the relevant search terms and

custodians, and the identification of data fields to be produced. These discovery conferences have been successful: the parties have reached agreement on most of the outstanding issues and have avoided the need to resort to motion practice before the Court on discovery issues.

4. Counterclaim Defendants are not seeking to extend the current discovery deadline because of a lack of agreement over the scope of discovery; rather, because Plaintiffs' claims have been dismissed, the posture of the case has changed dramatically, and because there are pending motions in front of the Court, it took the parties weeks to come to agreement over the proper scope of discovery. Much of this time has been dedicated to Counterclaim Defendants deciding what discovery would allow this case to move forward without requiring them to seek or conduct additional or duplicative discovery assuming the claims dismissed in the Court's April 16, 2015 Order are either brought back into this case, or refiled in state court.

Accordingly, Counterclaim Defendants respectfully request that the Court enter an order extending the deadline for the completion of all discovery by 90 days, to March 3, 2016, and extending other subsequent deadlines accordingly as set forth below. Cigna has consented to Counterclaim Defendants seeking this extension from Court, with the understanding that the parties have also agreed to intermediate deadlines for the completion of specific aspects of discovery (including when document production will be completed, when fact depositions will be completed, when expert reports are due, and when expert rebuttals are due) that the parties will adhere to even if the Motion for Stay of Discovery remains pending as such deadlines occur.

For the foregoing reasons, the Counterclaim Defendants ask the Court to extend the deadline to complete all discovery by 90 days, to March 3, 2016, and to extend subsequent deadlines as follows:

Description	Current Deadline	Proposed New Deadline
Motions other than motions in limine	December 30, 2015	March 29, 2016
Motions in limine	March 4, 2016	June 2, 2016
Status Report	January 14, 2016	April 13, 2016
Pretrial Disclosure Sheet	February 12, 2016	May 12, 2016
Evidentiary deposition designations	February 12, 2016	May 12, 2016
Counter-designations	February 23, 2016	May 23, 2016
Objections to depositions/video tapes to be used at trial	February 26, 2016	May 26, 2016
Responses to objections to depositions/video tapes to be used at trial	March 1, 2016	May 30, 2016
Trial Brief	March 4, 2016	June 2, 2016
Jury Instructions	March 4, 2016	June 2, 2016

Dated: July 17, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to all counsel of record.

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